

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FILED

MAR 29 2023

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

BRUCE GILLEY,

Plaintiff-Appellant,

v.

TOVA STABIN, in her individual capacity;  
COMMUNICATION MANAGER OF THE  
UNIVERSITY OF OREGON'S DIVISION  
OF EQUITY AND INCLUSION, in his or  
her official capacity,

Defendants-Appellees.

No. 23-35097

D.C. No. 3:22-cv-01181-HZ  
District of Oregon,  
Portland

ORDER

BRUCE GILLEY,

Plaintiff-Appellee,

v.

TOVA STABIN, in her individual capacity;  
COMMUNICATION MANAGER OF THE  
UNIVERSITY OF OREGON'S DIVISION  
OF EQUITY AND INCLUSION, in his or  
her official capacity,

Defendants-Appellants.

No. 23-35130

D.C. No. 3:22-cv-01181-HZ

Before: TASHIMA, S.R. THOMAS, and KOH, Circuit Judges.

The motion to dismiss appeal No. 23-35130 for lack of jurisdiction (Docket Entry No. 4) is denied without prejudice to renewing the arguments in the third

brief on cross-appeal. *See Nat'l Indus. v. Republic Nat'l Life Ins. Co.*, 677 F.2d 1258, 1262 (9th Cir. 1982) (merits panel may consider appellate jurisdiction despite earlier denial of motion to dismiss). Regardless of whether appellant renews the arguments, in addition to all other issues the parties wish to address in their briefs, the parties shall address whether this court has pendent jurisdiction over appeal No. 23-35130. *See, e.g., Cunningham v. Gates*, 229 F.3d 1271, 1285 (9th Cir. 2000) (for interlocutory appeals to be inextricably intertwined “the legal theories on which the issues advance must either (a) be so intertwined that we must decide the pendent issue in order to review the claims properly raised on interlocutory appeal, or (b) resolution of the issue properly raised on interlocutory appeal necessarily resolves the pendent issue”).

The first brief on cross-appeal has been filed. The second brief on cross-appeal is due April 26, 2023. The third brief on cross-appeal is due May 24, 2023. The optional cross-appeal reply brief is due within 21 days after service of the third brief on cross-appeal.